

#25229

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

SEP 19 2008

CLERK, U.S. DISTRICT COURT

By

Deputy

✓D
ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRIAN OVERBY

VS.

ALLIED INTERSTATE, INC.

3:08-cv-01649-D

JURY TRIAL DEMANDED

COMPLAINT
JURISDICTION

1. The jurisdiction of this Court attains pursuant to 15 U.S.C. §1692 et seq, the Fair Debt Collection Practices Act ("FDCPA") for which jurisdiction is proper in this Court. 15 U.S.C. §1692k(d) and state law claims supplemental thereto. Venue lies in the Northern District of Texas since Plaintiff's claims arose from acts of the Defendant perpetrated therein.

PARTIES

2. Plaintiff, Brian Overby, is a natural person whose permanent address is in Dallas, Texas and is a "consumer" as defined by 15 U.S.C. §1692a(3) of the FDCPA. Plaintiff is a resident and citizen of the State of Texas.

3. Defendant, Allied Interstate, Inc., is a corporation organized under the laws of the state of Minnesota, not registered to conduct business in Texas, and may be served with process by serving its registered agent for service of process: Edward T. Burke, 11222 Richmond, Suite 160, Houston, Texas 77082.

FACTUAL ALLEGATIONS

5. Plaintiff is an individual consumer as defined by 15 U.S.C. §1692a(3).

6. Defendant Allied Interstate, Inc. is a debt collector as defined by the FDCPA and Texas Debt Collection Practices Act.

7. On or about June 6, 2008, Allied Interstate, Inc., sent a demand letter to Plaintiff attempting to collect a debt alleged to be due to the original creditor, Sprint. Plaintiff does not believe

the debt is a valid debt.

8. On or about June 19, 2008, Plaintiff sent a letter to Allied Interstate requesting verification of the debt, and further disputing the debt.

9. No response to Plaintiff's letter has been received. Instead, on or about August 6, Allied Interstate sent a second collection letter to Plaintiff.

CAUSES OF ACTION

COUNT I

11. Plaintiff re-alleges and incorporates paragraphs 1 through 10 above as if fully set out herein.

12. Allied Interstate, Inc. is a debt collector as defined by the Fair Debt Collection Practices Act, 15 U.S.C. §1692a(6).

13. Defendant has violated 15 U.S.C. §1692g by failing to respond to Plaintiff's request for validation of the debt.

14. Defendant has violated 15 U.S.C. §1692e(2)(A) by falsely representing the character, amount, or legal status of a debt.

COUNT II

15. Plaintiff re-alleges and incorporates paragraphs 1 through 14 above as if fully set out herein.

16. In violation of Tex. Fin. Code §392.301(a)(8), the Defendant threatened to take (and/or did take) an action prohibited by law.

17. In violation of Tex. Fin. Code §392.202, the Defendant did not investigate Plaintiff's dispute and did not respond to Plaintiff's request and continued to report the debt, not marked disputed, on Plaintiff's credit report.

COUNT III

18. Plaintiff re-alleges and incorporates paragraphs 1 through 17 above.

19. Pursuant to Tex. Fin.Code §392.404, the Defendant's violations of the Texas Debt Collection Practices Act also constitute a deceptive trade practice Subchapter E, Chapter 17, Business and Commerce Code ("DTPA"), and is actionable under that chapter.

20. The foregoing acts and omissions were undertaken on behalf of the Defendant by its respective officers, agents, or employees acting at all times relevant hereto within the scope of that relationship.

21. The foregoing acts and omissions of the Defendant were undertaken wilfully, intentionally, knowingly, and/or in gross disregard of the rights of the Plaintiff.

22. The foregoing acts and omissions of the Defendant were undertaken indiscriminately and persistently, as part of its regular and routine collection efforts, and without regard to or consideration of the identity of rights of the Plaintiff.

23. By reason of the allegations in this petition, the Texas Debt Collection Practices Act and Fair Debt Collection Practices Act, , Plaintiff is entitled to recover attorney's fees in a sum that is reasonable in relation to the amount of work expended for which Plaintiff sues herein. The attorney whose name is subscribed to this pleading has been employed to assist Plaintiff in the prosecution of this action.

Prayer for Relief

WHEREFORE, the Plaintiff prays that this Court:

1. Declare that Defendant's actions violate the FDCPA and TDCPA.
2. Enter judgment in favor of Plaintiffs and against Defendant for statutory damages, actual damages, costs, and reasonable attorney fees as provided by 15 U.S.C. §1692k(a) and/or Tex. Fin.Code Ann. §392.403.
3. Grant such further relief as deemed just.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sharon Campbell". The signature is written in dark ink and is positioned above the printed contact information.

Sharon K. Campbell
State Bar # 03717600
3100 Monticello Ave., Suite 500
Dallas, Texas 75206
Telephone: 214/351-3260
Fax: 214/265-7626
Sharon@SharonKCampbell.com

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Bran Overby

ORIGINAL

DEFENDANTS

Allied Interstate, Inc.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Sharon Campbell
3100 Monticello Ave Suite 500
Dallas, TX 75205/2143513260/214265-7626

Attorneys (If Known)

RECEIVED

SEP 19 2008

CLERK, U.S. DISTRICT COURT

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equ. Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Violation of Federal Debt Collection Practices Act by failing to verify

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE 9-18-08

SIGNATURE OF ATTORNEY OF RECORD

Sharon Campbell

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE